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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/358,407	07/22/1999	MANABU OHGA	862.2934	1536

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NEW YORK, NY 10112

EXAMINER
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SAJOUS, WESNER

ART UNIT	PAPER NUMBER
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2676

14

DATE MAILED: 12/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/358,407

Applicant(s)

OHGA, MANABU

Examiner

Wesner Sajous

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### **Remark**

This communication is responsive to the amendment dated 11/29/2003. Claims 1-6, and 8-14 are presented for examination. Claims 7 and 15 are canceled.

### ***Response to Amendments/Arguments***

The Applicant, at page 8, paragraph 2 of the response argues that Katoh's user interface is not provided for inputting of information relating to the limitations of claims 1, 5, 8, 12 and 13, and that a user who does not have sufficient knowledge about the color appearance model, cannot determine suitable chromatic adaptability by using the user interface of Katoh.

The Examiner, in response, respectfully disagrees, because in Katoh, a display (3) is used as an input means to transmit or to enable the user interface (or processor 1) (1) to process visual environment or optical environment parameters specifying luminance of ambient light to observe the picture handled by the output device (see abstract). This method recited in Katoh is construed to relate information or viewing environment (i.e., viewing positions) between the display (3) and printer (4), as illustrated at fig. 11. In Katoh, a parameter setting means (50) is used by a user to set a parameter of viewing environment (or viewing condition) of the inputted picture information before the user interface (or processor 1) can performed color process on the image to be outputted. See figs. 11 and 12, and col. 18, line 38 to col. 19, line 16.

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The Applicant is noted that the limitation reciting "inputting location information which relates to a distance between positions of a viewing subject at a data source and a viewing subject at a destination side" is broad in nature, and is believe to not clearly define the Applicant's claimed invention, as intended. It is interpreted by the Examiner to merely means to use an input device (i.e., a computer display, as a data source) to input attribute information relating to how a user want a viewing subject to be outputted at a destination side (i.e., a printer), wherein the inputted location information is noted to represent the monitor luminance parameter value and the picture luminance parameter at current with respect to the parameters expected for output, as depicted in figs. 11 and 12. Hence, the Applicant is suggested to amend the claim in a more defined manner, in order to overcome the teaching and suggestions of the Katoh reference. Thus, the arguments are not deemed persuasive. The rejections are maintained.

With respect to claims 6, and 14, the Applicant argues that Fisch and Usami do not relate to color processing of the general type as disclosed by Katoh and the method of claim 6, and therefore conclude that the combination of references is improper. In addition, the Applicant argues that the motivation to make visual calibration of color images on the display device is not provided by either Katoh or Fisch. Moreover, the Applicant argues that the description pointed at col. 2, lines 47-60 does not include the phrase "chromatic adaptability".

The Examiner in response disagrees because all the references are related to color processing, namely Fisch relates to combination of colors in digital color imaging proof

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system (see abstract) and Usami to method of converting color data (see abstract).

Based on this fact and the on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the explanations given in the preceding sections of the present Office Action (paper number 12), and incorporated herein, the references, all, performed color processing and, the combination of references is therefore, proper. As for the Applicant's assertion that the motivation to make visual calibration of color images on the display device is not provided by the references, the Examiner disagrees because the provided motivation is found in the Fisch reference (see abstract, and col. 2, lines 3-25). The Applicant should note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

With regard to the "chromatic adaptability" clause, it is noted that such concept is taught in the main reference, the Katoh reference (see col. 5, lines 35-42); and since the Fisch reference performs visual calibration on the image with respect to hues, tones,

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opaque, and transparency and according to how the viewer sense the a target color (see col. 2, lines 3-46), the color processing of Fisch is performed according to "chromatic adaptability", as claimed. In addition, it is submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness. In the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specifically support that particular motivation and/or explanation based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is NOT seen that the Examiner's combination of references is unsupported by the applied prior art of record.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-5, and 8-13 are rejected under 35 U.S.C. 102 (b) as being anticipated by, or in the alternative under 35 U.S.C. 103(a) as being unpatentable over Katoh (5,754,682).

Considering claim 1, Katoh, figs. 11 and 12, discloses an image processing method (102) for performing color process based on color appearance model, said method comprises the steps of inputting (*e.g., via CRT 3 of the transmitting side, see fig. 11*) location information (*e.g., optical environment parameters specifying luminance of ambient light to observe the picture handled by the output device, see abstract*) which relates to a distance between a viewing subject in a data source side (*e.g., the transmission side or CRT 3*) and a viewing subject in a data destination side (*e.g., the receiving side or Printer 4. See col. 17, lines 42-59*). Katoh discloses setting a parameter of viewing condition based on the inputted location information (*as performed by item 50 of fig. 11, see also fig. 12 and col. 18, line 38 to col. 19, line 16*); and performing the color process based on the color appearance model of the inputted location information (*as performed by the functions of devices 14 and 15 of fig. 11*).

The applicant should duly note that, in analyzing the embodiment of Katoh, the inputted location information and the viewing condition parameters are both correlated to the optical environment parameters. A parameter with respect to viewing condition is set when the user alternatively selects or enters a [new] parameter that is associated with the environment parameters of the picture processing system on the screen, as characterized by the suggestion at col. 19, lines 1-16.

Re claim 2, the claimed "parameter includes a chromatic adaptability condition (114) based on the inputted location information" is met by fig. 12, wherein the chromatic adaptability condition corresponds with the set luminance level of the ambient light as depicted in fig. 12. See cols. 17-18, lines 60-7.

In claim 3, Katoh, at fig. 12, discloses the step of inputting plural items of viewing information (e.g., light source, surround luminance and monitor luminance), which relate to a viewing condition of the data source side (e.g., CRT 3 of fig. 11) and a viewing condition of the data destination side (e.g., printer 4 of fig. 11).

In claim 4, Katoh discloses the color process comprises color matching processing on profiles (26/28) of the data source side and the data destination side. See col. 3, line 59 to col. 4, line 10.

The invention of claim 5, although slightly different, recites features equivalent to and performing the method of claim. As the various elements of claim 1 have been found to be met by the teaching of Katoh, it is apparent that the applied prior art teaches the underlying elements. As such, the method of claim 5 is rejected under the same rationale as claim 1, for in a Katoh, a user operator is manually inputting the parameters. See col. 18, lines 36-42.

Apparatuses claims 8-11 recite features equivalent to and performing the same functions as method claims 1-4, respectively, they are, therefore, subjected to rejections for the same rationale set forth for method claims 1-4.

Claim 12 is for a computer program product performing the method of claim 1; it is, therefore, similarly rejected.

Claim 13 recite features equivalent to claim 5, it is, therefore, rejected under the same rationale as claim 5.

5. Claims 6, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katoh in view of Fisch et al. (Fisch), Pat. No. 5598272 and further in view of Usami (6341175).

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Regarding claim 6, Katoh discloses most claimed features of the invention, as similarly recited above in rejected claim 1, however Katoh fails to disclose the step of adjusting balance and absolute intensity of chromatic adaptability.

Fisch teaches the step of adjusting balance and absolute intensity of chromatic adaptability. See col. 2, lines 47-60. Thus, the ordinary skilled in the art at the time the invention was made would have found it obvious to modify Katoh the adjustment of color balance and the absolute intensity adjustments, as taught by Fisch, in order to allow a user to visually calibrate the color images on the display device. For the teaching of Fisch is complimentary to the teachings of Katoh, and the combination of the two would not have departed from the scope of the invention without undue experimentation.

It is noted that the combination of Katoh and Fisch fails to teach the forward and inverse conversions of colors.

Usami teaches the forward and inverse conversions of colors. See fig. 1 and col. 3, lines 59-67.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the features of Katoh and Fisch to include the forward and inverse conversions of colors, as taught by Usami, in order to convert color data very easily between sets of device data under different output conditions to obtain desired colors. See Usami's col. 1, lines 57-60.

Claim 14 is a computer program product performing the method of claim 6; it is, therefore, rejected under the same rationale set forth for claim 6.

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### **Conclusion**

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

**Any response to this action should be mailed to :**

**Box**

Commissioner of Patents and Trademarks

Washington, DC 20231

**or faxed to:**

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE")

**Or:**

(703) 308-5359 for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-held delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA , 6th floor (receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wesner Sajous whose telephone number is (703) 308-

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5857. The examiner can also be reached on Mondays thru Thursdays and on alternate Fridays between 9:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella, can be reached at (703) 308-6829. The fax phone number for this group is (703) 308-6606.

*Wesner Eujous - WOE*



12/03/03



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